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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re C.D., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

S.D.,

Defendant and Appellant.

G042832

(Super. Ct. No. DP015965)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary Bischoff,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie
Torrez, Deputy County Counsel, for Plaintiff and Respondent.

S.D. (Mother) appeals from the order terminating parental rights to her two-year-old son, C.D. (Welf. & Inst. Code, § 366.26.)¹ She contends the juvenile court erred by (1) summarily denying her section 388 petition, and (2) failing to apply the parental benefit exception to termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).) We find no error and affirm the order.

FACTS

Detention

Then six-week-old C.D. was originally taken into protective custody, and then ordered detained, in Ventura County in July 2007, after Mother was placed on a psychiatric hold. Mother and C.D. were at a public library where Mother urinated on herself, said she heard voices, and acted bizarrely. She later left C.D. with someone who was unable to care for him. Mother's parents reported she had been hospitalized in the past because of mental illness, and they could not care for a newborn baby. Mother named two different men as possibly being C.D.'s father. Neither has participated in these proceedings and will not be discussed further.

Jurisdictional Hearing

At the jurisdictional hearing in August 2007, the Ventura County juvenile court sustained an amended petition, finding C.D. fell under section 300, subdivisions (b) [failure to protect] and (g) [no provision for support]. Mother acknowledged she could not properly care for C.D. at the time. The matter was then transferred to Orange County, where Mother had moved, for a dispositional hearing. In September, C.D. was placed with the maternal grandparents in Newport Beach.

Dispositional Hearing

In the report for the dispositional hearing, Orange County Social Services Agency (SSA) reported Mother told the social worker she tried most drugs and used

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All further statutory references are to the Welfare and Institutions Code.

methamphetamine regularly until 2005. Mother also admitted she had been involuntarily hospitalized for psychiatric holds on numerous occasions. The maternal grandparents worried they could not protect C.D. from Mother. They noted Mother was appropriate during her visits, but they felt she was incapable of caring for C.D. Mother was living with her sister. Eventually, the maternal grandfather said he thought it safe for Mother to move home with C.D., but the social worker would not approve Mother's doing so. The court ordered family reunification services for Mother including a parenting class, counseling, psychotropic medication treatment, and drug testing. A six-month review hearing was set for February 27, 2008.

Six-Month Review Hearing

In December 2007, the social worker reported Mother appeared frustrated with her case plan requirements—she did not want to drug test, take a parenting class, or attend individual counseling. Mother visited C.D. regularly but denied to the social worker she was living in the maternal grandparents' home. Mother's regular visits with C.D. went well, and they appeared to be bonding.

On January 23, 2008, the social worker reported Mother had begun working on her case plan, but the social worker discovered Mother had been living with her parents and C.D. for the past two months without SSA's authorization. Because the maternal grandparents were unable to keep Mother out of their home, SSA removed C.D. from the home and placed him in a temporary emergency shelter until a safety plan could be arranged.

On February 27, 2008, the social worker reported C.D. had been placed in a foster home. Mother had moved out of the maternal grandparents' home, completed a parenting class, and enrolled in individual counseling. Mother was no longer seeing her psychiatrist and was referred to Orange County Health Care Agency for psychiatric care.

Mother continued to consistently attend twice-weekly visits with C.D. that were very positive. She was attentive to C.D. during the visits and came prepared with baby

food, diapers, clothing, and blankets. Accordingly, her visits were increased to three hours twice weekly. The social worker supported Mother's efforts to reunify with C.D., but remained concerned about Mother's mental health and her ability to maintain her mental health by complying with her psychiatrist's recommendations and taking her prescribed medications. The court continued family reunification services for Mother and set a 12-month review hearing on July 30, 2008.

12-Month Review Hearing

In April 2008, SSA reported C.D. was still in a foster home. Mother had moved back into her parents' home—apparently with the social worker's approval—after one month of living on her own. Mother was receiving psychiatric care and appeared to be taking her medication. Mother continued to come prepared for visits with C.D. She was appropriate at visits, and C.D. smiled and went to her freely. The social worker increased visits to 18 hours per week with one overnight visit per week supervised by the maternal grandparents.

In May 2008, SSA increased Mother's visits to three overnight visits per week. The foster mother believed C.D. was attached to Mother, as he appeared happy to see her when she picked him up and did not want her to leave when the visit was over. At the end of May, C.D. was placed with Mother for a 60-day trial visit. Originally, they lived at the maternal grandparents' home, but Mother intended to move to her own place in the summer.

In August, the social worker met with Mother and C.D. in their new apartment. C.D. appeared healthy and Mother appeared attentive and responsive to his needs. SSA recommended the court return C.D. to Mother's custody. At the 12-month review hearing on September 2, 2008, the court ordered C.D. placed with Mother under a plan of family maintenance. The court ordered Mother to continue in individual counseling and follow the recommendations of her psychiatrist. The court set a review hearing for March 2, 2009.

Family Maintenance Review Period/Subsequent Detention

In the first report for the family maintenance review hearing, SSA reported troubling changes. In November 2008, a Child Abuse Report (CAR) was filed after C.D. was taken to the hospital for burns on his hands. The allegations of general and severe neglect were unfounded, but in mid-November, a second CAR was filed alleging general neglect of C.D. The report alleged Mother was suicidal, did not feel she could care for C.D., and preferred another family adopt him. The allegations were deemed unfounded, but because of Mother's emotional state, she was referred to individual counseling and offered an in-home parent aide.

On December 22, 2008, Mother reported to the social worker she was in Illinois with C.D. She had gone there with her boyfriend "Bernie" for the holidays and had decided to move there permanently to take advantage of a lower cost of living. Mother contacted Child Protective Services (CPS) in Illinois and asked for her case to be transferred to Illinois. SSA immediately requested Illinois CPS conduct a courtesy welfare check on C.D., and learned Mother and Bernie had left Illinois and Bernie was alleged to have a drug history.

In early January, Mother reported to her SSA social worker she was considering returning to California with C.D., but had broken her arm, which required surgery, and she could not travel. A few days later, Mother called and said she had moved to Missouri and wanted an Interstate Compact for the Placement of Children (ICPC) application made so she could reside there permanently.

SSA requested Missouri CPS conduct a welfare check on C.D. The Missouri CPS social worker found Mother, C.D., and Bernie living in a room in a converted nursing home. C.D. appeared clean, but Mother was disheveled. The social worker advised Mother she needed to find suitable housing for C.D. and gave her referrals for mental health services and counseling.

On January 9, 2009, Mother, C.D., and Bernie went to the family support office in Missouri and said they could not feed C.D. and needed assistance. Mother was acting strangely and police were telephoned but were not called to the scene.

In February 2009, two CAR's were filed in Missouri alleging domestic violence between Mother and Bernie as well as unsanitary living conditions. Missouri CPS and police went to Mother's residence to investigate but found Mother and C.D. fleeing as they arrived. During the investigation, several witnesses reported seeing bruises and welts on C.D. and reported one instance where Mother grabbed him by the arm and caused a bruise. Witnesses also reported it was Bernie who broke Mother's arm, and they fought frequently. They also claimed Mother was neglecting to change or feed C.D. There were reports Mother was pregnant and Bernie and Mother were using crack cocaine. The residence itself was deplorable, as witnesses had described. The social worker observed it to be unsanitary; there was a foul odor, urine, and feces smeared on the floor, trash scattered on the floor, and bottles of hydrocodone (pain pills) left on the floor and table.

On February 23, Mother informed SSA she had now moved to Indiana, and SSA obtained a protective warrant for Mother and C.D. On February 24, Indiana police found C.D. at the address given by Mother. Mother was not there and the house was "pretty dirty." Police executed the warrant by taking C.D. into protective custody.

After being taken into protective custody in Indiana, C.D. was taken to the emergency room, and was observed to have bruises and marks on his body including bruises and abrasions to C.D.'s earlobe, neck, hairline, lower back, abdomen, and legs. The SSA social worker who transported C.D. from Indiana back to California also observed numerous bruises and welts on him.

Supplemental Petition/Jurisdictional Hearing

On March 3, 2009, SSA filed a supplemental petition alleging Mother lived a transient lifestyle with C.D., was involved in domestic violence with her boyfriend, and

placed C.D. at risk of physical harm or neglect. At the detention hearing, the court ordered C.D. detained and set a trial date on the supplemental petition.

Supplemental Jurisdictional Hearing

For the jurisdictional hearing, SSA reported Mother, now back in California, claimed the allegations of the supplemental petition were false. She denied Bernie was her boyfriend, and said she was currently residing with a man named Rob, who was C.D.'s godfather. She told the social worker, "I don't think [C.D.] knows I'm his mother." Mother denied her mental illness was serious, and she felt her bipolar diagnosis was incorrect. She blamed the unsanitary living conditions of her Missouri residence on another person and denied evading authorities when she moved.

Mother denied ever hitting C.D. or leaving him alone with another person. She believed C.D.'s injuries were caused by the family's new pit bull puppy—the explanation given to her by Bernie—and his own physical activity. Mother admitted Bernie was "harsh" with C.D. and C.D. was afraid of him.

Although when first interviewed by SSA upon her return to California, Mother denied domestic violence, in April interviews with the social worker, she told a different story. She admitted Bernie was violent with her and had grabbed her by the hair and hit her head against a wall. She said Bernie had kicked her and caused her to fall and break her arm, although Mother also said she believed the incident was an accident. Mother said she was scared of Bernie and tried to get away from him, but he "pulled the plug out of the wall and she had to sneak her calls on the cell phone." Thirteen witnesses from Missouri corroborated domestic violence and claimed Mother physically abused and neglected C.D.

A Child Abuse Services Team (CAST) physician reviewed C.D.'s medical records and opined his injuries were not consistent with the history provided by Mother. The number and location of C.D.'s injuries were suspicious and appeared to be non-accidental. In the physician's opinion, certain circular injuries could have been caused

from cigarette burns or skin infections. C.D. had numerous fingernail marks on his back and inner thigh, and bruising to his abdomen that appeared nonaccidental.

A maternal aunt told the social worker Mother had told her about violent acts committed against her by Bernie. The maternal aunt reported Mother also had her own history of committing violent acts. Mother had threatened her parents with a knife, started fires, stolen cars, engaged in prostitution, and used and sold drugs. Mother had a criminal history, including arrests for possession of controlled substances, arson, theft, and robbery.

Mother was referred to drug testing, counseling, and a psychiatrist to evaluate her medication. Her drug tests were all negative. The social worker was concerned about Mother's mental health, the numerous conflicting statements she provided, and her inability to explain the bruises and marks on C.D.'s body.

On April 28, 2009, Mother pled no contest to the amended supplemental petition that included Mother's history of mental problems, her transient lifestyle, and her violent relationship with Bernie. The juvenile court found the petition true and continued the matter 30 days for a combined contested dispositional and six-month review hearing.

Supplemental Dispositional Hearing

For the supplemental dispositional hearing, SSA reported Mother was now residing in a motel after moving several times since her return to California. Mother was participating in therapy, but her therapist observed Mother was agitated, defensive, and exhibited a disorganized thought process. On June 1, 2009, the court ordered C.D. removed from Mother's custody. It denied Mother family reunification services. Nevertheless, the court authorized twice weekly two-hour monitored visitation, a medication evaluation, therapy, a personal empowerment program, and drug testing. It set a permanency planning hearing for September 21, 2009.

Mother's 388 Petitions

Mother then filed a series of section 388 petitions. The first, filed on July 21, requested the court change the visitation order to increase her visits to four hours twice a

week. In her declaration, Mother stated she was taking her medications, and she had completed a personal empowerment program that helped her recognize “how my relationship with an abuser harmed [C.D.]” Mother stated C.D. had “an emotional bond with [her]” and it would be in his best interests to have increased visits. The court summarily denied the petition request because it did not state new evidence or changed circumstances and the proposed change did not promote C.D.’s best interest.

On September 21, Mother filed a second section 388 petition again asking for an increase in visits. Mother’s declaration contained the same information as the prior, but she attached the log of monitor notes from her regular visits with C.D. over the past three months. The court summarily denied the petition. The court found Mother’s visits with C.D. were not progressing in a positive manner, as she was often inattentive and brought inappropriate items to the visits.

On October 19, Mother filed her third section 388 petition requesting the court return C.D. to her custody. Mother claimed her circumstances had changed, because she had recently married Bernie, and they lived in a large motel room where they could care for C.D. and provide for his needs. Mother believed it would be detrimental to C.D. if her parental rights were terminated because of her biological, physical, and emotional bond with him. The court summarily denied Mother’s third section 388 petition, again finding she had not shown new evidence or changed circumstances such that the proposed order would promote C.D.’s best interest.

Permanency Planning Hearing

In SSA reports for the permanency planning hearing, the social worker recommended the court terminate parental rights and free C.D. for adoption. C.D. had been placed in a prospective adoptive home for over eight months. His caretakers loved him, provided for his needs, and were dedicated to adopting him. C.D. was described as a happy, active, and friendly two year old. He was diagnosed with speech impairment but was otherwise developmentally on target.

The social worker described Mother's visits with C.D. since returning to California in March 2009. Mother had weekly visits with C.D. totaling four hours. Monitors noted C.D. was not affectionate with Mother, and at times he pushed her away. At the beginning of visits, C.D. did not hug or kiss Mother, and when she tried to hug him, he rejected her affection, or expressed indifference to her, preferring to engage with other adults at the visits (e.g., the monitors or a friend Mother brought to some visits). There were some safety concerns, including that one time Mother failed to hold C.D.'s hand as they walked through a parking lot, she brought inappropriate items to visits even after being asked not to, and she once asked a monitor to supervise C.D. during the visits so she could continue reading. Mother began bringing Bernie to visits without authorization.

In October, visitation monitors reported C.D. had begun interacting more with Mother, as well as with other adults at the visit location. C.D. called Mother "mommy" and began being affectionate with her, but when visits ended he did not initiate a good-bye hug or kiss, or show any distress in leaving Mother. C.D.'s caretakers reported C.D. did not ever make any mention of Mother.

SSA reported Mother had completed individual counseling, but her therapist reported she was resistant towards her treatment goals. Mother completed a personal empowerment program and attended some drug tests, but was terminated after missing three drug tests. Mother enrolled in mental health services for her psychotropic medication, but adamantly claimed she did not need the medication and only took it because she believed it was required by a court order. In July, the psychiatric nurse practitioner who treated Mother and prescribed her medication, told the social worker she suspected Mother was not taking her medication based on her behavior, and she diagnosed Mother with bipolar disorder.

The social worker had also observed Mother's drastic mood swings between tearfulness and aggression. He was concerned Mother continued to change residences regularly. He was also concerned Mother had recently married Bernie and brought him to the visits with C.D. without authorization. The social worker believed Mother loved C.D.,

but she was unable to care for him, or make appropriate decisions during her monitored visits. The social worker felt C.D. was in need of stability, after living most of his young life in numerous placements and being exposed to Mother's neglect, abuse, and unsanitary living conditions. He reviewed all C.D.'s placements and noted his longest period of stability in his life was with his current caretakers.

The social worker testified at the permanency hearing that C.D. was likely to be adopted because of his young age, health, and personality, and his caretaker was committed to adopting him. Mother attended all her authorized visits with C.D., and while they generally were appropriate, at one observed visit, the social worker saw C.D. reject Mother's affection and push her away.

Mother testified C.D. had been in her custody for approximately six months of his life, but he also resided with her parents and she lived there too, for many months. Accordingly, Mother testified she had lived with C.D. for about one year and three months. Mother also said she attended every visit she was authorized to have with C.D. The only reason she was not currently acting in a parental role was because she did not have custody of him.

Mother testified it would benefit C.D. to continue contact with her because of their biological bond, her education, her faith, and her willingness to help him develop as a person. Mother believed it would be detrimental to C.D. if he were not returned to her care because her bond with him was stronger than his bond with his current caretakers. Mother denied Bernie broke her arm or was ever abusive to her or C.D. She believed C.D. was removed from her care as an infant because of her lack of sleep. Mother denied her home was ever dirty. She also testified that although she was prescribed psychotropic medication, she never took it. Mother also denied stating she wished C.D. were adopted.

The court found C.D. was adoptable. As to the parental benefit exception, it found Mother satisfied the first prong of regular and consistent visits, but not the second, that C.D. would benefit from continuing the relationship. In ruling, the court referred to the

numerous reports from SSA monitors that C.D. was angry or indifferent toward Mother during visits, did not react to her displays of affection and rarely sought comfort or attention from her. It viewed the videos of visits Mother had introduced into evidence and found they showed little interaction between Mother and C.D. during visits, corroborating visitation monitors' reports. The court terminated Mother's parental rights.

DISCUSSION

Summary Denial of Section 388 Petition

Mother contends she was entitled to an evidentiary hearing on her third section 388 petition seeking return of C.D. to her custody. We review the juvenile court's denial of a section 388 petition without hearing for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 316-318; *In re Angel B.* (2002) 97 Cal.App.4th 454, 460.) Because Mother failed to meet her burden to demonstrate her section 388 petition warranted a hearing, we find no abuse of discretion.

To warrant a hearing on a section 388 petition, "The parent seeking modification must 'make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]' [Citations.] There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the child[.] [Citation.] If the liberally construed allegations of the petition do not show changed circumstances such that the child's best interests will be promoted by the proposed change of order, the dependency court need not order a hearing. [Citation.]" (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

Mother sought to modify the dispositional order by returning C.D. to her custody. In her declaration, Mother claimed her circumstances had changed because she had recently married Bernie, they had no disputes, and were making "sound choices" about their lives. They had moved into a large hotel room where they could care for C.D. and provide for his needs. Mother had adequate income from disability benefits and other

financial assistance to support the family. Mother had completed a personal empowerment program. She believed it would be detrimental to C.D. if her parental rights were terminated because of her biological, physical, and emotional bond with him.

The juvenile court did not abuse its discretion by finding there had been no showing by Mother of changed circumstances. “[T]he change of circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged prior order.” (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.) Mother has not demonstrated a change in the circumstances that led to C.D.’s dependency—her unstable mental health and her neglect of and inability to properly parent C.D. By the time of the permanency planning hearing, Mother was not taking her medications and resisting therapy. She still had a transient lifestyle.

Furthermore, Mother failed to demonstrate a modification of the dispositional order and return of C.D. to her custody was in his best interest. “[S]ection 388 makes clear that the hearing is only to be held if it appears that the best interests of the child may be promoted by the proposed change of order, which necessarily contemplates that a court need not order a hearing if this element is absent from the showing made by the petition.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 807, fn. omitted; see also *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529 [“It is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child”].)

Mother asserted it was in C.D.’s best interests to be returned to her custody because her circumstances had changed—she and Bernie were now married, and she had a residence and adequate financial support—and because she and C.D. had strong bonds and she was best suited to raising him. The court did not err in finding Mother had not shown the modification would be in C.D.’s best interests.

C.D. was taken into protective custody in July 2007 at six weeks old due to Mother’s unstable mental health and general inability to care for C.D. After a year of

services, C.D. was placed back in Mother's care under a plan of family maintenance in September 2008. But it did not take long for things to deteriorate. The maternal aunt reported that at Thanksgiving time, she observed Mother apparently under the influence of drugs, barely coherent and unable to care for C.D., and that C.D. suffered neglect and mistreatment by Mother and her boyfriend, Bernie, who was alleged to have a drug history. Mother and C.D. (and apparently Bernie), had moved to an apartment in the fall of 2008. The maternal aunt told the social worker that a janitor and an acquaintance who lived in the apartment complex expressed concerns to her about drug activity at the apartment and C.D.'s safety.

Sometime in December 2008, Mother and Bernie left California, leading C.D. on a disturbing three-month tri-state odyssey that ended with his being taken back into protective custody. First, they went to Illinois. Mother told the SSA social worker she wanted the case transferred there as she planned on moving there permanently. But when the Illinois CPS social worker went to conduct a welfare check on Mother and C.D., they were gone.

Mother next called the SSA social worker and said she was considering returning to California, but she had broken her arm, requiring surgery and could not travel. A few days later, Mother called the SSA social worker and said she had moved to Missouri and wanted the dependency case transferred there because she planned on moving there permanently. Missouri CPS found Mother, C.D., and Bernie renting a room in a converted nursing home. When Mother later went to the family support office in Missouri asking for assistance, she was acting strangely.

In February, CAR's were filed in Missouri alleging domestic violence between Mother and Bernie as well as unsanitary living conditions. When Missouri CPS and police went to the residence to investigate, Mother was fleeing with C.D. Numerous witnesses were interviewed and gave consistent reports about physical abuse of C.D., violence between Mother and Bernie, and drug use. They also reported on the deplorable

living conditions in the residence, which were confirmed by the social worker. One witness who had been inside the residence told the social worker about witnessing Bernie's violent conduct, and said it was apparent to her that both Mother and C.D. were afraid of him and it appeared they were possibly being held captive by him. In subsequent interviews, Mother admitted to the social worker that during this time, Bernie was "harsh" with C.D. and C.D. was afraid of him. Although Mother at first denied domestic violence, she later admitted Bernie was violent with her and had caused her to break her arm. Mother admitted she was afraid of Bernie and had been trying to get away from him. The maternal aunt reported Mother had confided in her that Bernie was physically violent with her.

After fleeing Missouri, Mother and Bernie took C.D. to Indiana. Mother called SSA saying it was now her plan to move there permanently. A warrant was issued and Indiana police found C.D. at the address given by Mother, Mother was not there and the house was "pretty dirty." C.D. had numerous bruises and scratch marks on his body. Mother claimed some of the injuries were simply due to C.D. being an active one-and-one-half-year-old child. Mother also said she believed Bernie's explanation that others were caused by C.D. playing with the family's pit bull. But a CAST physician who reviewed C.D.'s medical records opined the injuries detailed were not consistent with Mother's explanation; the injuries were suspicious and appeared to be nonaccidental.

Back in California, with C.D. in protective custody, Mother began regular visitation. In her first and second section 388 petitions, filed in July 2008 and September 2008, Mother claimed increased visitation was appropriate because of her changed circumstances. Specifically, Mother declared she had completed a personal empowerment program that had helped her recognize how her abuser (i.e., Bernie) had harmed C.D. and had led her and C.D. away from Orange County where she had family support to a far away place where she had no where to turn for help. Mother declared she now recognized the danger such people presented to her and her child, and she was no longer in that relationship. But in her third section 388 petition, filed just one month later,

Mother urged C.D. should be returned because she had now married Bernie and they “have not been in any disputes,” had “a high degree of self control,” and planned on making “sound choices.”

In view of the foregoing, we simply cannot say the trial court abused its discretion by concluding Mother had not demonstrated return of C.D. to her custody was in the child’s best interest and denying an evidentiary hearing on her final section 388 petition. Mother’s decision to return to live with the man who had physically abused her and her child, and of whom C.D. was apparently afraid, on its face demonstrates it would not have been in his best interests to modify the dispositional order.

2. Parental Benefit Exception to Termination of Parental Rights

Mother contends the juvenile court erred by failing to apply the parental benefit exception to termination of parental rights. We find no error.

At a permanency planning hearing, the juvenile court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573-574 (*Autumn H.*)) An exception to the adoption preference occurs when termination of parental rights would be detrimental to the child because the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) The parent bears the burden of proof on both these prongs: (1) that visitation was consistent and regular; and (2) that the child would benefit from continuing the relationship. (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1253.)

Here, there is no question Mother satisfied the first prong of the parental benefit exception. Her visitation has been regular and consistent, and for that she is to be highly commended. But we cannot say the juvenile court erred by concluding the second prong was not met. To overcome the benefits associated with a stable, adoptive family, the parent seeking to invoke the section 366.26, subdivision (c)(1)(B)(i), exception must prove

that severing the relationship will cause not merely some harm but substantial harm to the child. (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.) Similarly, “the exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348 (*Jasmine D.*).

In *Autumn H.*, *supra*, 27 Cal.App.4th at page 575, the court articulated a test for determining whether a child would benefit from *continuing* a relationship with the natural parent. To succeed under this test, the parent must establish that “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” In evaluating this issue, the court must “balance[] the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Ibid.*) “The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond[, including t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs” (*Id.* at pp. 575-576.)

“[P]leasant and cordial . . . visits are, by themselves, insufficient to mandate a permanent plan other than adoption.” (*In re Brian R.* (1991) 2 Cal.App.4th 904, 924.) “[F]requent and loving contact” may also be insufficient to establish the type of beneficial relationship “contemplated by the statute.” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418.) “Interaction between [a] natural parent and child will always confer some incidental benefit to the child[,]” but the basis of a beneficial relationship is that the parents have

“occupied a parental role.” (*Id.* at pp. 1418-1419.) “‘While friendships are important, a child needs at least one parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent.’” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

Whether we apply the abuse of discretion standard or the substantial evidence standard (see *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351 [“practical differences between the two standards of review are not significant”]), the result on appeal is the same. Substantial evidence supports the juvenile court’s conclusion termination of parental rights would not cause C.D. detriment because Mother failed to demonstrate the benefit he would receive from maintaining their relationship outweighs the benefit he will gain in a permanent home with adoptive parents. (See *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575 [parent bore burden of establishing termination of parental rights would greatly harm child]; accord *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

In re Jerome D. (2000) 84 Cal.App.4th 1200 (*Jerome D.*) and *In re Amber M.* (2002) 103 Cal.App.4th 681 (*Amber M.*), illustrate the compelling evidence necessary to establish the benefit exception. In *Jerome D.*, *supra*, 84 Cal.App.4th at page 1206, the child “seemed lonely, sad, and . . . ‘the odd child out’” in his placement. He wanted to live with his mother and had enjoyed unsupervised night visits in her home. (*Id.* at p. 1207.) A psychologist opined the child and his mother “shared a ‘strong and well[-]developed’ parent-child relationship and a ‘close attachment’ approaching a primary bond.” (*Ibid.*) The court concluded that keeping parental rights intact would prevent Jerome’s “position as the odd child out in [placement] from becoming entrenched by a cessation of visits and the loss of his mother while [his half-siblings] continued to enjoy visits and remained [the mother’s] children.” (*Id.* at p. 1208.)

In *Amber M.*, *supra*, 103 Cal.App.4th at page 690, the court reversed termination of parental rights where a psychologist, therapists, and the court-appointed special advocate uniformly concluded “a beneficial parental relationship . . . clearly

outweigh[ed] the benefit of adoption.” Additionally, two older children had a “strong primary bond” with their mother, and the younger child was “very strongly attached to her.” (*Ibid.*) If the adoptions had proceeded, the children would have been adopted in separate groups. (*Id.* at pp. 690-691.)

Here, Mother did not demonstrate that harm would have ensued from termination of parental rights similar to that demonstrated in *Amber M.* or *Jerome D.* At the permanency stage, the bond the child shares with the parent and the harm that might arise from terminating parental rights must be balanced against what is to be gained in a permanent stable home, and “it is only in an *extraordinary case* that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350, italics added.) The parental benefit exception will apply only where the parent has demonstrated the benefits to the child of continuing the parental relationship *outweigh* the benefits of permanence through adoption.

Mother’s reliance on *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*) and *In re Brandon C.* (1999) 71 Cal.App.4th 1530 (*Brandon C.*), is misplaced as both are distinguishable. In *Brandon C.*, *supra*, 71 Cal.App.4th at page 1533, the court *upheld* a trial court determination termination of parental rights would be detrimental to the children, therefore it does not support the contention that here there is no substantial evidence to support the finding the parental benefit exception *does not* apply. Furthermore, in that case there was evidence from multiple sources (testimony from the mother and the paternal grandmother who was the children’s current caretaker and their identified prospective adoptive parent) of the close bond between the mother and the children and that continuing contact would be beneficial to the children, and social services presented no evidence to the contrary. (*Id.* at p. 1537.)

In *S.B.*, *supra*, 164 Cal.App.4th at page 298, father had been the child’s primary caregiver for three years. Following the child’s detention due to the parents’ drug abuse, father “‘complied with every aspect of his case plan,’ including maintaining his

sobriety and consistently visiting [the child].” (*Id.* at p. 293.) But father’s emotional and physical health, compromised due to his years of combat service during the Vietnam War, interfered with his ability to reunify, and father conceded “his current health problems impeded his ability to care for [the child] full time.” (*Id.* at p. 294.) A bonding study indicated that “because the bond between [father] and [the child] was fairly strong, there was a potential for harm to [the child] were she to lose the parent-child relationship.” (*Id.* at pp. 295-296.) The social worker admitted there would be “some detriment” to the child if parental rights were terminated. (*Id.* at p. 295.) The juvenile court found the father and the child had “‘an emotionally significant relationship’” (*Id.* at p. 298.) But because the child looked to her grandparents for her daily needs and nurturing, it concluded the parental benefit exception could not be applied. (*Id.* at pp. 296-297.) In reversing, the appellate court concluded application of the benefit exception did not depend on the child’s primary attachment. Based on the evidence, including that father “maintained a parental relationship with [the child] through consistent contact and visitation[,]” father’s “devotion to [the child] was constant, as evinced by his full compliance with his case plan and continued efforts to regain his physical and psychological health[,]” and the evidence the child “loved her father, wanted their relationship to continue and derived some measure of benefit from his visits[,] . . . the only reasonable inference is that [the child] would be greatly harmed by the loss of her significant, positive relationship with [father]. [Citation.]” (*Id.* at pp. 300-301.)

Unlike *S.B.* and *Brandon C.*, here it cannot be said the only reasonable inference that can be drawn from the evidence is that C.D. would be greatly harmed if parental rights are terminated. Mother points out she had lived with and cared for C.D. for much of his short life. But that is not dispositive on the nature and quality of the relationship in assessing detriment. Here, there was evidence that from the time C.D. was taken back into protective custody in March 2009 until the permanency planning hearing in October 2009 that Mother’s visits with C.D. were not progressing in such a way that the

court was required to find C.D. would be greatly harmed by termination of the parental relationship. C.D. was not affectionate with Mother, and at times he pushed her away. At the beginning of visits, C.D. did not hug or kiss Mother, and when she tried to hug him, he rejected her affection, or expressed indifference to Mother, preferring to engage with other adults at the visits. Even when C.D. did begin interacting more with Mother, he also was interacting more with other adults at the visits, and when visits ended did not initiate a good-bye hug or kiss or show any distress in leaving Mother. Away from visits, C.D. never made mention of Mother. Additionally, there was evidence Mother did not necessarily display good parenting skills at visits. There were safety concerns. Mother sometimes brought inappropriate items to visits and was sometimes unattentive. And Mother began bringing Bernie (of whom evidence demonstrated C.D. was afraid) to visits without authorization. Under the circumstances, we cannot say the juvenile court erred in finding Mother failed to carry her burden to prove the parental benefit exception applied.

We take exception with Mother's characterization of the positions SSA has taken in this proceeding. Mother asserts that everything was going well, and SSA supported her reunification efforts giving positive reports about her visits with C.D., until early 2009 when SSA removed C.D., deciding "adoption by a complete stranger was a good idea." She accuses SSA of then embarking on a campaign "to fulfill its own adoption prophecy" by filtering its reports on Mother's visitation with C.D. through "a negative and cynical lens, constructing a non-existent contrast between the quality and love in early visit versus later visits."

Mother completely ignores that almost seven months passed between C.D.'s return to her in September 2008 and his redetention in March 2009, a clear demarcation between those "early visits" and "later visits." In those intervening months, Mother and Bernie led the child around the country, subjecting him to an unstable lifestyle, neglect, and abuse. There is a clear difference in the quality of visits prior to Mother regaining custody

of C.D. in the fall of 2008, and his redetention in the winter of 2009. We see no inconsistencies in SSA's position in this case.

DISPOSITION

The order terminating parental rights is affirmed.

O'LEARY, J.

WE CONCUR:

SILLS, P. J.

FYBEL, J.